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BAR BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION

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"IF A MAN GOES INTO LAW IT PAYS TO BE A MASTER OF IT."
[Justice Holmes.]

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O F F I C E R S

GEORGE M. BRESLIN, President

WILLIAM C. MATTHES, Senior Vice-President

HARRY J. McCLEAN, Junior Vice-President

Secretary's Office: 1124 Rowan Bldg., Los Angeles. Telephone TUcker 8118

ALEXANDER MACDONALD, Secretary

EWELL D. MOORE, Treasurer

J. L. ELKINS, Executive Secretary

BULLETIN BUSINESS OFFICE
241 EAST FOURTH STREET
TRinity 5206

PHILBRICK McCODY, Editor
1015 Spring Arcade Building
Michigan 3988

BULLETIN EDITORIAL OFFICE
1124 Rowan Building
TUcker 8118

THE NEED FOR CONTINUOUS EFFORT

IN 1917 and 1918 the direct public participation in war financing, apart from taxes, was through the purchase of Liberty Bonds. Today, as the War Savings Committee for Southern California points out, "The immense cost of the war must be financed as far as possible through taxes and War Savings Bonds. Financing through commercial banks is inflationary and should be prevented as much as possible." There appears on another page of this issue a brief statement of three ways in which attorneys can help in the government's undertaking to finance the present war.

No one can tell, nor much less hazard a fair guess, what the total cost of this war will be to us—even today the figures are astronomical and have little meaning for the average citizen who foots the bill. The one thing that is or should be clear is that everyone of us must contribute without stint every available dime and dollar over and above those needed to pay the minimum cost of living and the inevitably increasing taxes. In short, we must forget the profits and all the other incidents of "business as usual" and make every possible sacrifice to pay as we go at least some portion of the cost of the nation's supreme effort.

But if we must forget the incidents of business as usual, should we not also relegate to the limbo of forgotten things the ballyhoo of that era? In the years gone by there were more weeks for this and months for that than there were days, weeks and months in the calendar put together. We do not suggest that they did not serve well enough their purpose of stimulating the trade of their many sponsors for a brief time. It seems to us, however, that such methods cannot begin to bring us to a realization of the great need for sustained action.

The banners and placards on our streets tell us that September is "Salute to Our Heroes Month," and we are urged accordingly to buy war savings bonds and stamps. The inference is that when the month is over our obligations are at an end. Nothing, of course, is further from the truth. We will go much faster along the road that we have chosen if we have done with this and all the other evidences of "business as usual" and drive home to everyone that our needs can be met and victory attained only if we give of ourselves and our dollars each day, each month and each year for the duration.

THE SIXTEENTH PRESIDENT OF THE STATE BAR



FRANK B. BELCHER

EARLY in 1914, shortly before the outbreak of World War I, a young gentleman from Missouri was admitted to the Bar of the State of California. Today, in the midst of World War II, he has become the leader of that Bar.

Frank B. Belcher, who has just been elected president of the State Bar of California, has witnessed the growth of the State Bar not only as a member engaged in active practice, but from the viewpoint of membership on its Board of Governors during the past two years. Others may chronicle the many activities of his eventful and successful career as a lawyer. It is enough for us here to note that he has long been of service to the Bar of the State through the instrumentality of the Los Angeles Bar Association. Not to go back too far, that record discloses that he has acted as a member or as

chairman of important committees too numerous to list here and for two years was one of the advisers to the Junior Barristers. In addition he has always been on call to do his share of the important work of the Bar Association which, though seldom reported, redounds to the benefit of the public and the profession. In 1934 Frank Belcher was elected to the Board of Trustees of the Association and in 1936 became the Junior Vice President. In 1937 he was the Senior Vice President and in the following year was elected President. With this record of service it was but natural that the Board of Governors of the State Bar should choose him unanimously as President. In that capacity Frank Belcher will have the unqualified support of the legal profession in the State, and particularly of those who know him best as an indefatigable worker and an able leader. We congratulate him and wish him well in his new office.

ROLL OF HONOR

Early this month the *Los Angeles Journal* published the names of the more than six hundred members of the State Bar from Los Angeles County who are now serving in the armed forces of the nation. Among these are several members of the Association whose names have not heretofore been published in the BULLETIN. During the past month we have been notified that the following members of the Los Angeles Bar Association are now in active service:

Reid R. Briggs, Ensign USNR; Gordon Files, Ensign USNR;
Berkeley F. Jones, Lt. USNR; Lowell Matthay, Lt. USNR; Rollin L. McNitt, Jr., Ensign USNR; Bradner Peterson, USNR; Joseph S. Rogers, USA; William A. C. Roethke, Lt. USNR; John M. Sherman, Ensign USNR; Randolph L. Shinn, Ensign, USNR; Evan H. Sweet, First Lt. USMCR; T. H. Sword, Ensign USNR; Robert L. Wood, Lt. (j.g.) USNR.

And just the other day the BULLETIN Committee received, with regret, the resignation of Stephen M. Farrand. Since June of this year Mr. Farrand has been serving with the Department of Justice as Chief of Hearing Boards in the Alien Enemy Control Unit. He has now entered service as a First Lieutenant in the Corps of Military Police, Army of the United States.

WORDS ARE WEAPONS

By Ben S. Beery, of the Los Angeles Bar

Editor's note: This is the first of two articles by Mr. Beery about the dangerous activities within the United States of enemy agents, particularly those who represent the Nazi government of Germany. Mr. Beery is particularly well qualified to write on this subject, having served for several years as chairman of the Americanism Committee of The American Legion, Department of California, 17th District. In addition to the extensive investigations made by this Committee and the reports it has received, these articles are based upon testimony given before the Tenney Committee of the State Legislature; the testimony given in both the Federal and State Courts at the trials of persons charged with distributing Nazi propaganda and with other subversive activities; and upon such books as "Mein Kampf" by Adolph Hitler, "The Voice of Destruction" by Herman Rauschning, "The Strategy of Terror" by Edmund Taylor, and "Total Espionage" by Kurtz Reiss. The second article, to be published in the BULLETIN for October, will cover, as Mr. Beery states, "the sordid history of the German propaganda machine; the portrayal of their deeds in this country and the means adopted to counteract them."

MEN and equipment are not enough. We have men and we are producing vast quantities of armament not only for our own forces, but for our Allies. France had men and France had material—yet, she failed before the first onslaught of the German Army. One thing the French lacked—an intense will-to-win.

If we have the will-to-win, and a deep-rooted belief in the righteousness of our cause, equipment and material things will be forthcoming. On the other hand, if we have the material things, but do not have a firm conviction that we are in the right, nothing can save us. No one knows this better than Adolph Hitler, for in the early days of the Nazi party, he told his men "give me the will-to-win, and I will find a thousand ways to obtain the victory."

Will-to-win, or as it is commonly called, "morale", though essential to our success, is something that is very easily destroyed. A word may lead to a suspicion, a suspicion to loss of confidence, and loss of confidence to decline of morale. With it, we win—without it, we die. Thus, the protection and maintenance of high morale is one of the greatest tasks of all loyal Americans.

And yet, forces—inimical, sinister, well organized forces, are at work attempting to destroy this spirit that is so necessary for our success. These forces and the people composing them do not wear badges, in fact, they have no marks of distinction. They do not operate openly under the banner of the Axis. No, most of them pretend to be loyal, sincere Americans, but all of them are working energetically for our destruction.

They work insidiously, and generally, to the ordinary observer, their conduct, while not commendable, does not demonstrate that they are unpatriotic. Frequently they hide behind the guise of "crack-pot" organizations. This is an excellent blind, as most Americans feel that crack-pots should be ignored. The Nazi Government, knowing this attitude, has directed its propagandists to assume this role so that the people will be deceived until the Nazi propaganda has done its work. To apprehend the propagandists before it is too late, requires constant study of their words and constant observation of their works.

A study of their words is generally more important than observing their actions. Most of them use words as their main weapon, and again people are deceived, believing that words alone are ineffective. But words are lethal to a nation, just as bullets, guns, and tanks. They are a part and a well integrated part of Hitler's total war. No more can one believe the old adage that "sticks and stones can break my bones, but words can never hurt me." Words can hurt. Words can destroy, and in fact, they have destroyed. Words did more to destroy France than any other single weapon. They created utter confusion, and caused many of the citizens of that great democracy to lose faith in their government. Words broke the morale of the French people and wiped out their will-to-resist.

The breakdown of the French morale in 1940 was no mere coincidence.

Nor was it an accident. It was a part of a well planned campaign by Germany for the conquest of the world. Germany intended to wage war not only with tanks and other material weapons, but also to "soften up" its enemy with propaganda before the war started, so that the victim would collapse at the first attack by the army. Hitler, himself, declared: "How to achieve the moral breakdown of the enemy before the war has started—that is the problem that interests me. I shall never start a war without the certainty that a demoralized enemy will succumb to the first strokes of a single gigantic attack. When the enemy is demoralized from within, when he stands on the brink of revolution, when social unrest threatens—that is the right moment."

In reviewing the recent history of the collapse of France, Hitler's words sound like the words of a prophet. He demoralized the French people from within and then crushed them by force of arms. He has tried the same tactics with all of the other countries that might become his enemies, and has had success in all of them except in Russia. Russia was the only country that was not affected by Hitler's propaganda and espionage. It is true that he has not accomplished the result that he would like, in either England or in this country, but this does not mean that he has not had some success: witness the internal hatreds, confusion, and dissension in this country before December 7th. Also, it does not mean that he has abandoned trying or that he does not still hope for success. On the contrary, his efforts are greater now than ever before. He is attempting to undermine us, and he may succeed, if we do not study his methods, and do not develop such a counter propaganda offensive that our efforts overcome all of his attempts. First, however, we must become thoroughly familiar with propaganda generally and with Hitler's use of it.

The word propaganda was originally used in connection with a school, The College of Propaganda, established by Pope Urban VIII in Italy in 1623, to train priests for missions. The word meant to educate in particular doctrines. This is a far cry from the meaning that the word has today.

The word was popularized during the last war, when it referred, at least in so far as it related to the part remembered by the people, to the spreading of stories about the wickedness of our enemies. The trend of propaganda, at that time, was to make us hate our enemies, and it was directed, in part, to the publication of stories about the cruelty of the Germans.

Some of the stories were undoubtedly exaggerated and some untrue, but the underlying theme that the Germans had been cruel and inhuman toward people of the conquered territories, was absolutely correct and rightfully created indignation in this country. After the war, the fact that some of the propaganda stories were distorted was revealed to the American people, and as these reports, for the most part, had been the spectacular ones, many people did not distinguish between that which was true, and that which was exaggerated, but characterized all accounts of German barbarity as being false propaganda. They went even further, and carried their suspicions of propaganda to other pronouncements of our government and the governments of our Allies. It has been said that probably no one factor contributed more to the rise of Hitler than the lack of confidence on the part of the people of the democracies in stories about the Nazis.

The German government made a thorough study of American psychology and fostered the belief in this country that the Germans had been misjudged, and that they were a kind and humane people—not the barbarians they had been pictured. The effectiveness of this propaganda can be demonstrated by the fact that few persons in this country recall that the Germans executed innocent hostages in the last war. Some few persons believe that the reports of similar

mass executions in this war are false propaganda, even though the Germans, out of their own mouths, and over their own radios, brag of the executions of innocent people—such as the slaughter of all of the men in Lidice.

Even though German propaganda, to persuade us that the Germans were not cruel or inhuman, was effective, it did not accomplish the supreme result that the Germans wanted; it did not create suspicion and hatred among Germany's potential enemies. It might have won some friends for Germany, but it did not cause Americans to hate citizens of other democracies or to become discontented with their own form of government. After the Nazi party was formed, and when Hitler was struggling for power, he realized that his propaganda must not only win converts to his side, but it must create dissension and ill-will among his potential enemies. In order to be successful, he knew that he had to separate the democracies and implant such discord among them that they would be incapable of concerted action. The means of doing this, he calculated, was a second type of propaganda.

Accordingly, he devoted his energies to the development of propaganda and left the work of organizing the party to others. As a result of his study, he laid down a theory of propaganda, to be used by the Nazi party at that time, and by the German government when he could control it. According to him: "The first task of propaganda is the winning of people for the future organization; the first task of organization is the winning of people for the continuation of propaganda. The second task of propaganda is the destruction of the existing condition, and the permeation of this condition with the new doctrine."

This theory of propaganda has pervaded the whole Nazi organization and persists to this day. It is true that the Nazis have subdivided the German Propaganda Ministry into many groups, but this is only for the purpose of facilitating the spread of propaganda, and has not changed the underlying principle. Nazi propaganda is still divided into two classes, one to win converts, and the other to destroy existing conditions. In every country Hitler has tried to win a few believers, and use them to disintegrate the nation.

In this country, Hitler has used the same technic. He employed his propaganda to win devotees, and also to destroy. Hitler realized that the American people, as a whole, are not so psychologically constituted that they can be persuaded to love Nazi slavery and brutality. Thus, he did not try to get henchmen from ordinary freedom-loving Americans. They were too far removed from German ideas and discipline to be influenced. But there was, in Hitler's mind, a group in this country that might not be so far removed from Teutonic influence that they could not be converted. So he decided to use the first branch of his propaganda in this country on the so-called German-Americans. He formed or rather took over the Auslands-Organization (League of Germans Abroad). In 1934, he appointed Ernst Wilhelm Bohle as its chief. Then a congress of the Auslands-Organization was called in Berlin. Delegates from this country and the rest of the world attended, and the Fuehrer, in addressing them said: "You are listening posts. Far from the front, you must prepare certain undertakings. You must prepare our own groundwork for the attack. Consider yourselves under orders; military law applies to you."

From that time on the German-American organizations in this country were subjected to a barrage of German propaganda, in an effort to convert their members and make them adherents to the Nazi cause. Kurt Riess, in his book entitled, "Total Espionage," relates that the Nazi underground movement in this country started with the formation of a club in Chicago called "Teutonia." This group was formed before Hitler came into power in Germany and was headed by Ulrich Staak. In 1932 the "North American Landesgruppe of the National Socialist Party" was founded in New York. Karl Manger

was appointed Fuehrer of this group and soon also controlled the Teutonia Club. Later, George Gyssling dissolved the National Socialist Party in this country and in its place he established the "Friends of the Hitler Movement." Gyssling, in April, 1933, was appointed Consul in Los Angeles, but before he left New York he renamed his group; it became "The Friends of New Germany." The "Friends of New Germany" soon became the "German-American Bund," and this name it retained through the balance of its notorious life.

While other groups, such as the Labor Front and the Auslands-Organization became fanatical Nazis, ready to do the Fuehrer's bidding, the German-American Bund remained the task force upon which Hitler most relied. The first branch of Nazi propaganda had done its work; it had made converts of the German-American Bund for the future task of our destruction.

Nevertheless, the German taskmaster was not satisfied; he wanted more converts among the German-Americans. Soon the Bund was trying to take control of all of the German Societies in the country. That the members of some of these other groups were loyal citizens of the United States was a matter of no concern to Hitler. The Bund was to take control of them. This policy of the German-American Bund was revealed before the Tenney Committee in Los Angeles, in October, 1941. At that time a loyal American of German birth testified about the pressure the Bund exerted upon the German-American organizations to compel them to support the Nazi cause.

The Nazis regarded all persons of German descent as Germans and thus felt that they should be party members or at least party sympathizers. Fritz Kuhn, the Fuehrer of the Bund, once expressed it when he said: "The citizenship papers in our pockets have not made us into another type of people. We have remained what we were, German men and women in America." Ernst Wilhelm Bohle, chief of the Auslands-Organization, stated: "We recognize only one idea; a German always and everywhere remains German and nothing but German and thereby a National Socialist."

Following the German propaganda theory, the German-American Bund, its own organization completed, undertook the second task of propaganda as defined by Hitler. It will be remembered that the second task of German propaganda is the destruction of the existing condition. The Bund set out to perform this work in America.

If one but casually reflects upon the disunity, confusion and turmoil engendered in this country before we were attacked by Japan, it must be conceded that the work was partially successful.

When Hitler first devoted himself to the Nazi party, the first phase of propaganda, namely, winning followers, may have been important, but it is apparent that as soon as power began to come his way, his ideas changed, and destruction of the moral fiber of the citizens of enemy countries by propaganda was paramount. Edmund Taylor calls it "dissolvent propaganda," and it became the basis of the Nazi scheme of total war. It was regarded by the Germans as a more destructive weapon than airplanes or other equipment of the army. In fact, it was the advance guard of the military attack. It was called "psychological warfare." Edmund Taylor, in his book entitled, "The Strategy of Terror," states: "The real aim of psychological warfare as understood by the Nazis was not to convert outsiders to their cause as commercial propagandists do, but to demoralize the enemy, to destroy the cohesion, discipline, and collective morale of hostile social groups. In other words, to break the enemy's will-to-win or simply his will-to-resist."

Rauschning, the former President of the Dantzig Senate, and himself once a high Nazi and an intimate of Hitler, reports Hitler as declaring:

"Artillery preparation before an attack as during the World War will be replaced in the future by the psychological dislocation of the adversary through revolutionary propaganda."

A new depth of degradation had been reached by the Nazis. In world history there have been many attempts to conquer an enemy and subject him to the control of the conqueror, but for the first time a nation formed an organization whose avowed purpose was not only to conquer, but to destroy the moral fiber of the people of the world; to prepare them for slavery. There have been many groups formed during the course of civilization to promulgate various doctrines, but it was left to the Nazis to foster a group whose main purpose was to engender hate, dissension and confusion. The Nazis have made a new contribution to the world that adequately measures their character.

There now remains one more chapter in the sordid history of the German propaganda machine; the portrayal of their deeds in this country and the means adopted to counteract them.

CAN DEMOCRACY SURVIVE THE WAR?*

THE question is not new. "Can Democracy Survive?" America gave the answer long ago and has repeated it many times in our history. This has been necessary, because democracy has been denied—in theory and in practice—by some of the cleverest minds that have darkened the earth. Defenders have been needed every hour, every day, every year of our development as a nation. At home and abroad scoffers have been legion, and while many a battle for democracy has not been won, there are those who do not observe that never has the war for democracy been lost. * * *

If we lose this war, there will be no democracy in the world, and no necessity of discussing its future. If we win this war at the cost of our way of life, there will be no necessity of discussing the survival of democracy. It will have passed from the face of the earth. It follows that the way to win this war will determine not only the nature of the peace, which concerns so many of our public men, but the character of the democracy in the years to come. * * * Only an undying faith can save our people in the years that follow this total war. The world—which has suffered such impoverishment in the past five years as never before known by man—will be no place in which new theories and untried practices will have chance of success. The one hope lies in our complete realization that we long ago discovered an answer to the greatest question that has ever been asked of man in his tragic days on this earth. That question is simple: How can men live together the world around—in harmony, in dignity, and in peace? We have an answer that arises directly out of our history. Only as our people realize that this war is now their war—a continuation of the struggle that was evident at their birth as a nation—will they remain true to their impressive record and once more take an aggressive leadership abroad as well as at home. * * *

In our own America we have achieved—never more so than in these days of intense national effort—a living unity. We are a free people. As Americans, we know that disagreements arise and conflict continues as long as man lives. A nation built of peoples from the ends of the earth knows that if unity is to be found in action, it must rest in freedom of thought. Our democracy, in war and in peace, must remain our democracy. That is the lesson of our history and our gift to the world. Do you ask for a declaration of faith? A democratic people—conscious of the eternal values of their own history, dedicated to the advancement of all mankind, resolved to build a structure within which men can live in security and dignity and peace—will survive.

*Excerpts from an address by Prof. Edgar Eugene Robinson, Stanford University, before the Commonwealth Club of California, August 7, 1942.

Help Win the War . . .

You can't buy guns without money.
We at home must provide it, and you
attorneys can greatly aid the Campaign
to sell War Savings Bonds.

•

Help put Los Angeles County over the top.

•

Read on the page opposite how you can do it.



WAR SAVINGS COMMITTEE FOR SOUTHERN CALIFORNIA

JOHN R. RICHARDS, *Chairman*
M. PENN PHILLIPS, *Vice-Chairman*
CHARLES E. DRIVER, *Vice-Chairman*

HOWARD D. MILLS,
Administrator for
Southern California

FINANCING THE WAR AND HOW ATTORNEYS CAN HELP

By Charles E. Driver,
Vice-Chairman, War Savings Committee for Southern California

THE immense cost of the war must be financed as far as possible through taxes and War Savings Bonds. Financing through commercial banks is inflationary and should be prevented as much as possible.

The Treasury Department has set a minimum sales goal of twelve billion dollars War Savings Bonds for the fiscal year ending June 30, 1943. California's share will be about 750 million dollars. Southern California's share will be about 410 million dollars. Los Angeles County's share will be about 315 million dollars. That is a big job. It is about one million dollars each working day for Los Angeles County alone. The program needs the active support of every citizen, and the lawyers are in a better position to help than most.

The Treasury Department has offered three types of War Savings Bonds—Series E, Series F, and Series G.

Series E is the bond you hear about the most. It is the "peoples' bond," sold at 75% of maturity value, and if held to maturity in ten years will yield 2.90%. Only \$5,000 maturity value of this issue may be purchased by the same person in any one calendar year, and it may be purchased only by individuals.

Series F and Series G bonds are attractive to larger investors. The Series F Bonds are sold at 74% of maturity value, mature in twelve years, and will yield 2.53% if held to maturity.

Series G bonds are sold at maturity value and pay 2½% per annum by check each six months. They mature in twelve years at par, but may be redeemed by the purchaser prior to that time at various discounts to adjust the interest rate already received to conform with rates for shorter term money. Series G bonds will be paid at par upon the death of the owner provided notice is given within four months.

Not more than \$100,000 cost price of either Series F or G bonds, or the two series combined, may be purchased by the same buyer in each calendar year. Corporations, associations, partnerships, trustees and executors, as well as individuals may purchase Series F and G bonds.

The fundamental basis of the Treasury campaign on War Savings Bonds is divided in two parts. First siphoning off at least 10% of all wages, salaries, and other current income for investment, primarily, in Series E bonds. The payroll savings plan is already in successful operation in most large concerns. Second, obtaining part of the investment capital of the country for investment in Series F and G bonds. The first part should produce about 65% of total sales and the second part about 35%. This means Los Angeles County should sell at least 205 million dollars of Series E Bonds, and 110 million of Series F and G bonds per annum.

You can help in three ways: first by purchasing regularly yourself; second, by recommending to your associates that they do the same; third by educating your clients in the investment merits and desirability of buying these issues, particularly the Series F and G bonds which are designed for the larger investors.

For those who have large estates, the Series G bonds particularly are very attractive. The rate of interest is high for the finest twelve-year obligation in the world, and the provision that these bonds may be cashed at par upon the owners' death gives the owner the opportunity to invest in something which the government guarantees will be worth what he paid for it upon his death.

Therefore, as an investment to set aside as a reserve for payment of inheritance taxes, Series G War Savings Bonds have no peer. You can give no better advice to your clients than to invest steadily in this issue until they own at least enough to cover their inheritance taxes.

Your help and cooperation will be appreciated by Uncle Sam, and your clients will be grateful for bringing this to their attention. Any questions that may occur to you as to the legal aspects of these bonds may be submitted to the writer by letter, addressed to him at 621 South Spring Street, Los Angeles, and an effort will be made to furnish authentic answers thereto.

A LOT OF LAWYERS

THE July, 1942, issue of *The Bar Examiner* contains a comment on the 1940 census figures showing, as of March in that year, 179,554 lawyers in the United States. This number, it is said, "apparently now more nearly approximates the actual number of practicing members of the bar engaged solely in pursuing their profession than was true in reference to comparable figures of the 1930 census." With an increase in population between 1930 and 1940 of 7.2 per cent, "the number of lawyers increased from 160,605 in 1930 to 179,554 in 1940, or 11.1 per cent, compared with an increase of 31 percent for the period 1920-1930 . . . the number of lawyers has increased almost twice as rapidly as has the population."

California, with an increase of population of 21.7 per cent (and only Florida and New Mexico had a greater rate) had an increase in lawyers of 7 per cent. In 1920, there were 197 lawyers in California to each 100,000 of the population, and in 1930 there were 178. Today, ranking eighth in the nation on this basis, there are 157 for each 100,000; in this respect the District of Columbia comes first with 727 as of March, 1940, almost 200 more than in 1920.

IMPORTANT NOTICE !

The United States Government has requested the undersigned, as President of the Los Angeles Bar Association, to make a survey of the membership to ascertain the names of individuals who are able to fluently read, write and speak any foreign language or languages, and members are requested to co-operate by writing to the office of the Association indicating their proficiency in the premises.

GEORGE M. BRESLIN, *President.*

THE OFFICE OF PRICE ADMINISTRATION. ITS PURPOSE AND ORGANIZATION

By Frank S. Balthis, Jr., of the Los Angeles Bar
State Attorney Southern California State Office, O. P. A.

THERE is some misunderstanding in the public mind concerning the purpose and function of the Office of Price Administration. This is understandable in view of the short period of time in which the several civilian War Agencies, including O. P. A., have been created and organized for comprehensive programs. In many minds the O. P. A. is a catch-all for practically all governmental activities not directly handled by the military or naval authorities. In this connection, it may be mentioned that the local State Office of the O. P. A. has received numerous inquiries upon matters which are completely outside its jurisdiction—for example, inquiries have been received upon such unrelated subjects as how to collect debts owed by Japanese firms or whether persons operating tailoring establishments near the southern border may cross the border to put cuffs on trousers.

THE SCOPE OF THE O.P.A. PROGRAM

Briefly, the scope of the O. P. A. program is threefold and covers the following: 1. The establishment of *price control* to prevent inflation; 2. The establishment of *rent control* to prevent unjustified increases in rent; 3. The establishment of a system of *rationing* to bring about a fair and equitable distribution of scarce commodities.

All O. P. A. activities are related to one of the above principal divisions. As will be noted later, the statutory authority for Price and Rent Control is expressly set forth in The Emergency Price Control Act of 1942, whereas, the authority for Rationing Control is based upon several different acts of Congress and executive orders and delegations of authority.

ORGANIZATION

The O. P. A., of course, centers in Washington under Leon Henderson, Administrator. The national headquarters, employing approximately 6,000 employees, permits extensive specialization in the three divisions mentioned above, particularly in the field of Price Control. The specialization is principally by commodities and industries so that in every field, such as iron and steel, clothing, lumber, textiles, non-ferrous metals, chemicals, retail trade and services and numerous other branches, there are specialists who understand the peculiar problems of the trade.

In the organization of the field offices throughout the country, the nation is divided into eight regions, each having its regional office. On the Pacific Coast, the five western states of California, Oregon, Washington, Arizona and Nevada constitute the eighth region with headquarters in San Francisco. Each state has a state organization and, in this respect, California has two, one for Northern California and one for Southern California. The State office for Southern California is located in Los Angeles.

It may be helpful to outline the state organization. This is headed by Neil Petree, State Administrator, and his assistants, Durward Howes and Harry Silke. The two principal Deputy State Administrators in charge of Price Control and Rationing are Arthur G. Coons, State Price Officer, and Paul Barksdale d'Orr, State Rationing Officer. The Legal Division is headed by the State Attorney and this division is divided into three sections, enforcement, price and rationing. John J. Ford is head of the enforcement section, Sidney H. Wall is in charge of the price section, and A. Stevens Halsted, Jr. supervises the rationing section. The Legal Investigation Unit is also headed by an attorney, John A. Dundas, as

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State Investigator. In the Legal Division there are eighteen attorneys and approximately forty legal investigators.

In addition to the state offices, the organization of O. P. A. contemplates the establishment and maintenance of District Offices at populous or important localities within the state area. Although the appropriation made by Congress limits the establishment of such district offices, there is an important district office in operation at San Diego. The district office in San Diego serves San Diego and Imperial Counties. Addison Housh is the Director of the San Diego Office and J. A. Donnelley is its Chief Attorney. Other district offices may be established in the future, if conditions and the budget permit.

There are approximately 225 persons employed in the Los Angeles office.

STATUTORY AUTHORITY

The Emergency Price Control Act of 1942 became effective January 30, 1942. This statute contains the authority and sanctions for Price and Rent Control. Previous to the enactment of this statute, there had been Price Control action under executive authority by three pre-statutory price agencies, all of which had been headed by Leon Henderson. The first was a price stabilization division established on May 29, 1940; the second was the Office of Price Administration and Civilian Supply, established by executive order on April 11, 1941; and the third was the Office of Price Administration by Executive order on August 28, 1941. Under these three agencies, 105 price schedules had been issued prior to the enactment of the statute. These price schedules dealt with particular commodities, the prices of which had been vitally affected by the first rush of defense orders. For instance, the first price schedule was issued by the price stabilization division on February 17, 1941, and announced a ceiling for second-hand machine tool prices, which had risen to fantastic heights. Thereafter, Price Schedule No. 2 was issued, covering aluminum scrap and No. 3 covered zinc scrap materials. These price schedules and others issued prior to the date of the statute constituted a system of "Selective Price Control". Later on, it was found necessary to enter into a general price "freeze" and, on April 28th, 1942, the General Maximum Price Regulation was issued, covering practically all commodities and services except those specifically exempted therein or covered by other specific maximum price regulations.

The price control contemplated by the statute is control over *maximum prices* of all articles, products, materials and services (unless specifically exempted) and whether at the manufacturer's, wholesaler's or retailer's level.

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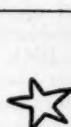
The system is flexible in that the Act does not become effective except through regulations or orders issued by the Administrator; in this respect, the Administrator is left free to make full use of differing formulae and techniques in determining, with respect to each commodity, a maximum price that is generally fair and equitable. Discretion is lodged in the Administrator either to establish maximum prices for particular commodities or groups of commodities in furtherance of a policy of selective price control or, when necessary, to establish a ceiling over prices for all or a number of commodities at one time.

Price regulations now in effect include the General Maximum Price Regulation and approximately 220 maximum price regulations covering specific commodities. In passing upon the price problems of a particular business or industry, an attorney should first determine the particular commodity involved and whether or not it is being sold at the retail, wholesale or manufacturer's level. The next question is whether the commodity or transaction involved is under the General Maximum Price Regulation, or "General Max", as it is sometimes called, or whether the subject matter is covered by a specific Maximum Price Regulation. In view of the constant number of new regulations, amendments and supplementary orders being issued, it is best to use one of the loose-leaf services available. These include those published by Commerce Clearing House, Prentice-Hall, Research Institute of America, and the new O. P. A. Service published by Pike and Fisher. It will probably also be advisable, in difficult or borderline cases, for the attorney to consult with the local office of O. P. A., in order to have the benefit of the most recent rulings and interpretations. The question of exemptions is sometimes important and it is necessary for the practicing attorney to know the commodities or services specifically exempted by the statute or by the General Maximum Price Regulation.

There are, of course, more commodities, services and transactions covered by the General Maximum Price Regulation than any of the special maximum price regulations and it is the subject of more numerous inquiries. At the local office, attorneys have tended to specialize in certain fields, such as services, textiles, iron and steel scrap, machinery, lumber, clothing, petroleum and meats and foods. Practicing attorneys may derive a great deal of assistance by consulting these attorney-specialists with the O. P. A.

The Emergency Price Control Act also contains provisions granting authority to the Price Administrator to establish rent control. The Administrator's rent control authority may be exercised within "Defense-Rental Areas", which may be designated by him. Section 2 (b) provides that the Administrator may establish maximum rents within a Defense-Rental Area if, within 60 days after the issuance of his recommendations, rents have not been stabilized or reduced by local action in accordance with these recommendations. The first opportunity to handle the situation is given to the locality involved. The administrative steps in the establishment of rent control are, therefore, as follows: (1) Designation of Defense-Rental Area; (2) A declaration stating the necessity for stabilization or the reduction of rents in the Defense-Rental Area, with recommendations as to the maximum or fair rent date; (3) Issuance of a maximum rent regulation for the Defense-Rental Area involved.

The first two steps for initiating rent control have been taken for this area. On April 28th, 1942, Los Angeles and Orange Counties were designated as a Defense-Rental Area and a declaration was issued that rents be reduced to, and stabilized at, the March 1st, 1942 level. However, no rent regulation has actually been issued at this date, although local officials anticipate that a rent regulation may be issued in the near future. When such regulation is issued, it will very probably freeze rents at the same level as existed on March 1st, 1942. At the present time the policy of the Office of Price Administration is opposed to any

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increase of rents by landlords, such policy being based upon the recommendation already issued by the Price Administrator on April 28, 1942.

The fundamental technique used in the establishment of rent control, as provided for under the statute, is the establishment of a maximum or fair rent date and the freezing of rents at that level. When the rent regulation is issued, it may permit adjustments to be made in cases of hardship, as in the case of substantial capital improvement or where the rent was unduly low because of family or other personal relationships, or was based upon seasonal demands for accommodations at the rent date involved. One of the principal methods used in this technique of handling rent control is the registration of all landlords. This registration requires landlords to state the maximum rent on each property owned and rented and this written statement affords a confirmation or check to the tenant, as a copy of the registration form must be sent to him, in addition to the filing of the registration form with the local rent office.

Other bases for legislative programs for rent control considered were: First, control through the operation of a Rent Commission; secondly, legislation providing to a tenant in an action for rent the defense that the rent charged is unreasonable and oppressive; and, third, the establishment of "fair rent" courts to administer rent control. The fourth principal technique employed in rent regulation has been rent pegging by reference to a particular date and this is the system which was found to be most practicable and also the fairest and most equitable in operation because the rents in effect on the base date were those voluntarily set by landlords.

The authority of O. P. A. to handle rationing of commodities results from a delegation of authority from the Executive and is not based upon any statutory authority granted by Congress *directly* to the Price Administrator. The subject

matter of allocation and rationing of civilian supplies has been covered by several acts of Congress. The first step was taken on May 29, 1940, when President Roosevelt, acting under authority of a statute passed in 1916 (39 Stat. 649), created the Advisory Commission to the Council of National Defense.

Shortly thereafter, Congress passed, and the President approved on June 28th, 1940, the Priorities Act (54 Stat. 676), which laid the foundation for subsequent priority and allocation programs. On January 7, 1941, the President issued an executive order establishing the Office of Production Management. This agency dealt principally with the matter of priorities and only incidentally with the problems of civilian supply. However, subsequently, as defense requirements took more and more of the available supplies, making more important the allocation of the residue among competing civilian demands, it was necessary for the President to establish, by executive order on April 11, 1941, the Office of Price Administration and Civilian Supply. Later, the Division of Civilian Supply was transferred to a new agency, the Supply Priorities and Allocations Board (S. P. A. B.). On January 16, 1942, O. P. M. and S. P. A. B. were replaced by the War Production Board (W. P. B.). The War Production Board has delegated to the Office of Price Administration the administration of the equitable rationing of products at the retail or consumer level.

In connection with the powers delegated to the President on priorities and allocations, it should be noted that the Priorities Act of June 28, 1940 was amended by the legislation called the Vinson Act on May 31, 1941. The heart of the Vinson Act reads as follows:

"Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material for defense or for private account or for export, the President may allocate such material in such manner and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

The Act further provides:

"The President may exercise any power, authority or discretion conferred on him by this section, through such department, agency, or officer of the Government as he may direct and in conformity with any rules and regulations which he may prescribe."

The sanctions necessary to enforce the allocation, priorities and rationing provisions of the statute and the executive orders issued pursuant thereto are found in the Second War Powers Act, which became effective March 27, 1942.

As to some commodities, the allocation of supplies may be fixed at other than the retail or consumer level. For instance, the War Production Board has issued an order fixing the amounts of coffee to which jobbers are entitled; this may result in retailers adopting a voluntary rationing plan, but actually there is no order or regulation rationing coffee at the consumer level. In view of the fact that there is no rationing at the retail level, O. P. A. has no authority or jurisdiction over the rationing of this particular commodity.

The commodities actually rationed and under control by O. P. A. order are as follows:

Rationing Order No. 1

Tires and Tubes and Recapping of Tires
and Camelback

Rationing Order No. 2A

New Passenger Automobiles

Rationing Order No. 3

Sugar for Consumers, Institutional and
Industrial Users, Retailers and Whole-
salers.

Rationing Order No. 4

New and Used Typewriters

Rationing Order No. 5A

Gasoline in Certain States

Rationing Order No. 7

New Adult Bicycles.

Numerous amendments and supplementary orders have been issued and it is, therefore, necessary for practicing attorneys who are consulted about such rationing orders to consult with one of the loose-leaf services mentioned above, or with rationing attorneys in the local O. P. A. office. The attorneys in the local State Office have access to all of the latest rulings and interpretations and can be of material assistance to practicing attorneys in the handling of rationing problems. No one doubts that it will be found necessary to extend the rationing program in the near future and more and more emphasis will be placed upon this portion of the program. As a matter of fact, price control and rationing frequently go hand in hand and it is necessary to have both in order to prevent inequities and inflation. For instance, in the case of a given scarce commodity, if a rationing program alone were adopted and there was no price control, the prices for such scarce goods would go to unlimited heights, depending upon the degree of scarcity. On the other hand, if price control alone was promulgated for the scarce commodity, then the element of scarcity and the fact that buyers would be competing for a limited supply of goods available would put terrific pressure against the price ceilings. In other words, experience has established that both price control and rationing are necessary where the element of scarcity is found in any important degree.

ENFORCEMENT PROVISIONS

The Emergency Price Control Act provides for several enforcement methods, which is in contrast to the circumscribed sanctions which were available to secure observance of price schedules issued during the pre-statutory period. The statute provides for the civil injunction, the criminal penalty, the treble damage suit and the license suspension suit.

The Administrator is authorized to apply for injunctive relief whenever any person has engaged, or is about to engage, in any actions or practices prohibited by the statute. Equitable proceedings to enjoin violations may be brought by the Administrator, either in the Federal District Courts or in the Courts of any state or territory. Another section of the Act provides that any person who willfully violates the statute, or who willfully falsifies any document or report required, shall be subject to a fine of not more than \$5,000 or to imprisonment for not more than one year, or both. Whenever the Administrator has reason to believe that any person has violated the criminal provisions of the Act, he may certify the facts to the Attorney General, who may, in his discretion, bring an appropriate criminal proceeding in the proper Federal Court.

A third sanction which may afford some incentive to general public participation in the compliance program is provided by permitting any person who buys a commodity for use or consumption, other than in the course of trade or business, or who pays rent at a rate above that established by a maximum price or rent regulation, to bring an action either for \$50.00 or for three times the amount of the overcharge, plus reasonable attorney's fees and costs. If the purchaser, in any given transaction, is not entitled to bring suit, then the Administrator may sue for the amount involved on behalf of the United States. The section of the statute providing for this sanction became effective July 30, 1942.

The statute also provides for licensing and a method of license suspension. This penalty, even for a limited period, is a more flexible and less harsh procedure than criminal prosecution and, in a great majority of cases, is vastly more of a deterrent than a suit in equity to enjoin further violations. License powers were used in the United States during World War I, such powers being conferred upon the Food Administrator, and at the end of the War 263,737 firms were under license in the Food Administration. The statute provides full authority and discretion to the Administrator as to the administrative methods to be used in

licensing. Safeguards are provided in the statute against abuse of this method of enforcement. For example, prior to the institution of the license suspension action, a warning notice must first have been given to the alleged violator.

CONCLUSION

No one can doubt the importance of the O. P. A. program in the war effort. The civilian economy, of course, is not separate and independent. It is vitally integrated with our military economy. The war program is, after all, an overall plan for making our total economy function efficiently during time of crisis. It is also true that civilian and military supplies and needs overlap to a great extent. It is to be hoped that members of the legal profession will contribute to the war program by assisting in every way possible in both the educational and compliance aspects of the three objectives of O. P. A., to prevent inflation, to prevent unjustified rent increases and to bring about an equitable distribution of scarce commodities.

SALVAGE!

The suggestion is made that attorneys can make a further effort at house-cleaning in their collective offices with great benefit to the salvage campaign. Old-fashioned corporate seals—the ones that line the top of that old bookcase or clutter up the shelves in the office—contain several metals much needed in our war effort. How about turning in the old corporate seals in your office to help seal the fate of Schickelgruber?



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PROFESSIONAL ETHICS: A RECENT OPINION

WE publish below the text of Opinion No. 237 of the American Bar Association Committee on Professional Ethics and Grievances referred to in the May, 1942, issue of the BULLETIN at page 209.

OPINION NO. 237. Filed November 22, 1941.

INTERMEDIARIES—The professional services of a lawyer should not be controlled by a lay agency which intervenes between client and lawyer.

INTERMEDIARIES—A lawyer's relation to his client should be personal and the responsibility should be directly to the client.

In Los Angeles and its environs, certain persons, firms, and corporations act as representatives for motion picture artists. Written contracts are entered into between the representatives and the artist which provide that the former shall act as the personal representative, manager, and agent for the artists, advise and secure employment for the artist, negotiate the terms of the employment contract, including compensation, credit provisions, working conditions, and the rights of the artist respecting approval of script, and like matters.

The representative receives a compensation of ten per cent of the gross amount received by the artist.

The representative is not authorized by the artist to employ an attorney to represent the artist. Representatives retain attorneys to render them legal services usually on a retainer basis.

We are asked to decide whether an attorney employed by the representative violates any rule of ethics in passing upon and aiding in the negotiations of the terms of the contract between the employer and artist:

- (1) When the lawyer does not see nor have any direct relation with the artist, and
- (2) When the lawyer receives no compensation from the artist.

The opinion of the committee was stated by Mr. Phillips, Messrs. Houghton, Drinker, Brown, Miller, Brand, and Jackson concurring.

The relation between the artist and the representative is that of principal and agent. In seeking employment and negotiating the terms of the employment contract, the representative acts for his principal, the artist. The contract is between the artist and the employer, not between the representative and the employer. Hence, the attorney who passes upon the terms of the contract and aids in its negotiation serves the artist, the principal, not the representative.

The fact that the representative is interested in ten per cent of the amount received by the artist under the contract does not, in our opinion, alter the situation.

Canon 35 in part reads:

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client.

We are of the opinion, under the acts stated, there being no authority, express or implied, in the representative to employ an attorney for the artist, this Canon is violated. The lawyer should be employed by the artist and he should be responsible directly to the artist when he undertakes to render legal services respecting a contract to which the artist, not the representative, is a party.

URGENT AND IMPORTANT

TYPEWRITERS. The armed forces of the United States government must have typewriters. If they are not forthcoming voluntarily the War Production Board will have to requisition them. No typewriter turned in will be used for non-military purposes.

If you have a typewriter purchased since 1935 which you can turn in, take it to the local agency of the make of the typewriter, which has been authorized by the United States government to purchase the machine for the government at a fixed price, which is the 1941 February re-sale price. Portables cannot be used.

It is your patriotic duty to turn in a typewriter. Los Angeles area must produce 50,000 machines. Do it before next Friday if possible.

SCRAP METAL AND RUBBER. Maybe you feel that the five or ten pounds of scrap metal or rubber you found the other day in your cellar or workshop won't count. You're wrong. The Government needs every ounce of it. Take it to your nearest salvage station or get in touch with your local Boy Scout Troop.

WASTE. Your personal war against waste will help win the war against the waste of human lives. Don't waste your efforts or any other essentials. Pitch in and help everywhere you can.

GEORGE M. BRESLIN,
President.

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